

From the Estate Planning & Probate Group

What is probate?

Probate is the legal process of settling the estate of someone who has passed away. In practice, this means that a person is appointed by the court (a “personal representative”) to step into the decedent’s shoes and wind up his or her affairs.

Is probate as bad as I’ve heard?

Not in most cases. While we’ve all heard “probate horror stories” over the years, the truth is that Washington State has one of the simplest probate systems in the nation. Assuming your will gives your personal representative all of the necessary powers, our system allows the personal representative to act with complete authority and without court intervention on nearly all matters, saving a significant amount of time and money. Furthermore, unlike some other states, attorneys fees are not based on a percentage of the value of the estate. This makes the probate procedure significantly less expensive than many other states, such as California, Hawaii, Montana, and Wyoming. Of course, there are those cases that include assets that are difficult to locate, family members that simply don’t trust each other, or heirs that contest the validity of the will feeling that they were “cheated” out of their inheritance. In those cases, yes, probate can be a long and costly endeavor. However, that is a function of particular circumstances surrounding the family, and not an inefficiency of the probate process itself.

How long does probate last?

This really depends on the assets and value of the estate, the work performed by the personal representative, the claims of creditors, and whether or not the will is being contested. Certain timeframes may give you a better understanding of how long probate might last. For instance, creditors may submit claims for up to four months (if they are notified of the decedent’s death), and an estate tax return must be filed within nine months of the decedent’s death (although this may be extended). Of course, if family members disagree, if the will is contested, or the personal representative is not diligent in his or her duties, it takes a considerably longer time.

Who acts on behalf of the estate?

The decedent appoints a personal representative in his or her will to be responsible for winding up his or her affairs. Generally, a personal representative doesn’t need special financial or legal knowledge and many individuals feel comfortable naming a friend or family member. The personal representative is entitled to reasonable compensation, which is paid from the estate.

What do I do if I’m named as the personal representative?

The first step is to hire an attorney. Your attorney is going to be your guide through this process, and you will need to feel at ease with him or her. The attorney should be someone who is capable of handling the complex estate planning and tax issues that may arise during the course of settling the estate and can assist you with the implementation and funding of various trusts that need to be established. You are not required to employ the attorney who drafted the will and often times if the decedent had a poorly drafted document, a skilled attorney may be able to mitigate its effects.

What information do I need to start probate?

Before you can open probate (and before you can be appointed by the court as the personal representative of the estate), you will need to do a little investigative work. This requires you to (1) find the original will, (2) gather the names and addresses of all beneficiaries named in the will as well as the names and addresses of all of the decedent’s children, grandchildren, etc., and (3) obtain multiple copies of the death certificate.

What if I can't find the original will?

If you can't find the original will, the law presumes that the decedent destroyed it. If you believe it was lost rather than destroyed, speak with your attorney. It may be costly to try to prove that the original will was lost but if it can avoid a substantial amount of taxes, it may be well worth the cost.

What if I can't find a will at all?

If the decedent passed away without a will, he or she is said to have died intestate. Intestate estates go through probate as well. Rather than the will governing the distribution of assets and appointment of a personal representative, Washington State law governs. Under this law, the estate assets will be distributed by the legislature's "best guess" as to how the average person would want his or her assets to be distributed. This law is quite rigid and does not take into account concerns such as tax minimization, family dynamics, and an array of other concerns unique to each individual. Finally, without a will, the administrator of the estate will likely be forced to post bond, and be required to ask permission of the court before taking any action on behalf of the estate.

I have gathered all of the information I need to start probate, now what?

Now you are ready to begin the probate process. This process requires you to take the following steps:

1. Open probate.

Your attorney will prepare a petition to the court requesting that the court find that the will is the last known will of the decedent; that it was validly executed (signed by the decedent) and attested (at least two witnesses signed verifying the decedent signed the will). The petition submitted to the court will state whether the estate is solvent (has more assets than debts). Additionally, you will need to sign a sworn oath stating that you are the named personal representative and that you are willing and able to serve. If the court determines that the will is valid, it will issue you an order admitting the will to probate and appointing you as personal representative of the estate. It will also issue you letters testamentary, which is your formal authorization to act on behalf of the estate. If the decedent died without a will, the procedure to appoint a personal representative is generally the same, but the terminology varies. Washington law governs who has the right to serve as administrator (as opposed to personal representative) of intestate estates. It allows the surviving spouse the right to serve first, followed by adult children. The court will issue this person letters of administration (as opposed to letters testamentary) that authorize such person to act on behalf of the estate.

2. Notify all interested parties of your appointment as personal representative.

Once you have been appointed personal representative, you are required to give notice of your appointment to each individual named in the will as well as to any heirs (children, grandchildren, etc.) who are not named in the will. This gives the beneficiaries and heirs an opportunity to challenge your appointment if they have reason to do so. However, if they fail to make a timely challenge after notification, they are barred from challenging your appointment down the line. Your attorney will provide you with this notice.

3. Notify the Department of Social and Health Services (DSHS).

In addition to notifying the beneficiaries and heirs, you must also notify the Department of Social and Health Services of the state of Washington of your appointment. This notice allows the department to review its records to determine if the decedent, or any beneficiary owes any unpaid child support.

4. Gather assets and information.

After all of the relevant parties have been notified of your appointment as personal representative, you will need to begin a review of the decedent's assets and relevant information. This includes a thorough search of paperwork to determine the location and account numbers of any bank and brokerage accounts, stock certificates, bonds, real estate deeds, and insurance policies. You will need to determine if the decedent had any safe deposit boxes and if so, examine its contents. You will need to speak with life insurance agencies and obtain claim forms, apply for death benefits from the Social Security Administration, Veterans Administration and/or employer pensions, and inventory all automobiles, furniture, jewelry, and other possessions.

5. Prepare an inventory and appraisal.

As you gather assets, you will need to create an estate inventory, listing each asset and the value of such asset as of the date of death. If an estate tax return is required to be filed (discussed below), formal appraisals will be necessary in order to substantiate the value of certain assets. Your attorney will work with you and an appraiser to obtain such appraisals. The beneficiaries of the estate are entitled to a copy of the inventory upon request. Once completed, the inventory will serve as a helpful tool for distributing assets and filing tax returns.

6. Determine debts.

As you gather estate information to prepare the inventory, you will also be required to determine the debts of the decedent. This requires you to review financial records and determine whether there are any outstanding loans (such as mortgages or auto loans) or other debts. You will also need to gather all bills and begin to pay those that you believe are due and reasonable.

7. Notify creditors.

As the personal representative, it is your duty to inform all of the decedent's creditors of his or her death. Your attorney will provide you with a notice to send to all known creditors. However, there may be some creditors that you don't know about. Those creditors have up to two years to come forward and file a claim against the estate. However, you can reduce this claim period to four months by publishing a notice of the decedent's death in a local newspaper and allowing it to run for three consecutive weeks.

8. Manage estate assets during administration.

It is the responsibility of the personal representative to manage and protect the assets of the estate. This can require, among other duties, setting up bookkeeping records, opening an estate checking account, collecting dividends and interest, paying bills, filing tax returns (see below), collecting receipts for expenditures, maintaining insurance on assets, and supervising a business interest.

9. Distribute assets to beneficiaries.

Once the taxes and other expenses have been paid, and the creditors claim period has expired, it is time to distribute the estate assets to the beneficiaries. Once each beneficiary receives all of the property to which he or she is entitled, the personal representative will have the beneficiary sign a receipt for full distribution and a waiver of all future notices.

10. Close the estate.

After all of the estate assets have been distributed, you can close the estate. Your attorney will prepare a declaration for your signature providing a summary of your actions as personal representative. The declaration, together with the receipts from the beneficiaries, will be filed with the court. Assuming a beneficiary does not object within 30 days of filing, the estate is automatically closed and you are discharged from your duties. In other words, probate is complete and you are all done.

Does the estate need to file a federal estate tax return?

If the decedent's taxable estate exceeds his or her available estate exemption amount, a federal estate tax return must be filed. The taxable estate may be valued as of (1) the date of death; or (2) the alternate valuation date, which is the date exactly six months following the date of death, whichever date is more advantageous for the decedent's estate. If a return is required, it must be filed within nine months from the date of the decedent's death. In many cases, no estate tax is actually owed as a result of tax planning in the decedent's will. Nonetheless, an estate tax return still must be filed.

Does the estate need to file a Washington State estate tax return?

If the decedent's estate exceeds \$2 million, a Washington State estate tax return is required to be filed. Similar to the federal return, if a Washington return is required, it must be filed within nine months from the date of the decedent's death.

Do I need to file an income tax return for the year the decedent died?

Yes. You will need to file an individual income tax return on behalf of the decedent for all income he or she earned from January 1st through the date of his or her death. This return will be due on April 15th of the following year.

Do I need to file an estate income tax return?

Yes. You will need to file an estate income tax return (known as a fiduciary income tax return, or Form 1041), for all income earned from the date of the decedent's death through December 31st of the year he or she died. If the estate is not closed by the end of the calendar year, you may have to file an income tax return in the following year to report all income earned by the estate. However, the IRS recognizes that the income from an estate may be minimal. If it does not meet a threshold each year, the estate will not be required to file an income tax return. For tax years ending before the second anniversary of the decedent's death, the estate does not have to pay quarterly estimated income taxes. For tax years ending after such date, the estate must make quarterly estimated income tax payments similar to those required by an individual.

What if the decedent didn't file income taxes last year?

If the decedent died prior to April 15th, or if the decedent received an income tax extension for the prior year's return, you must file this return on behalf of the decedent. If the decedent owned any income tax for a prior year, or if there was any income tax liability for the short tax year, such liabilities are deductible in calculating the federal estate tax.

How do I get started with the probate process?

The first step is to contact one of the attorneys in our Estate Planning & Probate Group. We will then set up a time to meet to discuss your circumstances and any potential tax issues.

**To learn more, contact our
Estate Planning & Probate Group**

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